

A.G. Contract No.: KR05-0305TRN
ECS File No.: JPA 05-015
Project No.: TEA-NOG-0(004)A
Section: I-19 to Boarder
Project: Terrace Avenue
TRACS No.: SL523 01C
Budget Source Item No.:

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF NOGALES

THIS AGREEMENT is entered into this date 3 August, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF NOGALES, acting by and through its MAYOR and CITY COUNCIL (the "City").

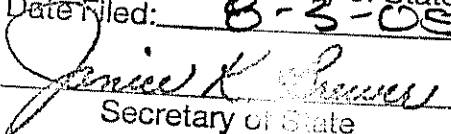
1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The interest of the State for this Project is in the acquisition of Federal Funds for the use and benefit of the City and is authorized as the designated agent Funds expended for the Project, are authorized by reason of Federal Law and regulations.

4. The Project lies within the boundary of the City and has been selected by the City; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The City, in order to obtain Federal funds for the construction of the Project, is willing to provide City funds to match Federal Funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering (CE) and administration costs

NO. 270065
Filed with the Secretary of State
Date Filed: 8-3-05

Secretary of State

By: 

6. The work embraced in this Agreement is to widen the 625' Terrace Avenue pedestrian walkway from Interstate 19 (I-19) and Border, and is described as the "Pedestrian Gateway to Nogales Mexico", hereinafter referred to as the "Project". In addition the Project will also feature raised crosswalks with stamped concrete, pedestrian lighting, emergency vehicle access, drainage improvements, landscaping and associated irrigation system, shade structures, informational and interpretive signing, public bus and taxi loading and unloading zones and passenger drop off and pick up zones. The City will be responsible for design, construction and maintenance of the Project. The estimated costs are as follows:

Construction TRACS No : SL523 01C

***Total Estimated Cost of the Project** **\$649,620.00**

Federal Aid Funds @ 94.3% of \$537,028.34 (Capped) \$500,000.00

Estimated City Funds @ 5.7% of \$537,028.34 \$ 37,028.34

City Funds @ 100% (difference between total cost and capped) \$112,591.66

Total Estimated City Funds **\$149,620.00**

*(Includes construction engineering and construction administration, and incidentals)

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designated the City to self-administer the Project.

c. Upon execution of this Agreement, make payments to the City for the direct actual cost of the construction of the Project, plus construction engineering, within thirty-days (30) after receipt and approval of an invoice.

d. Not be obligated to maintain said Project, should the City fail to budget or provide perpetual and proper maintenance as set forth in this Agreement.

2. The City shall:

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City up to 94.3% percent of the construction cost. Construction administration costs not participated in by FHWA shall be borne by the City.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government

d. Upon execution of this Agreement, invoice the State for the estimated 94.3% Federal Aid construction and construction administration costs addressed under this Agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

e. Provide electrical power, water connections and landscape maintenance during and after the construction phase, all at the City's expense.

f. Upon completion of the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance to the Project, including but not limited to; electrical power, water and landscape care

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement or for any resulting construction project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees of the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the construction and the construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

City of Nogales
Attn: Barbara Johnson
777 N. Grand Avenue
Nogales, AZ 85621
(520) 287-8352


10. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF NOGALES

STATE OF ARIZONA

Department of Transportation

By: 
ALBERT M. KRAMER
Mayor

By: 
SUSAN TELLEZ
Contract Administrator

ATTEST:

By: 
LETICIA ROBINSON
Clerk

JPA 05-015

APPROVAL OF THE CITY OF NOGALES

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF NOGALES, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 13th day of July, 2005



P. LAWRENCE KLOSE
City Attorney

ORDER No. 2005-07-066

**AN ORDER OF THE MAYOR AND COUNCIL OF THE
CITY OF NOGALES, ARIZONA AUTHORIZING THE
CITY MANAGER TO ENTER INTO AN INTER-
GOVERNMENTAL AGREEMENT WITH THE STATE
OF ARIZONA AND THE CITY OF NOGALES IN
SUPPORT OF THE TERRACE AVENUE
ENHANCEMENT GRANT**

WHEREAS, the Terrace Avenue Enhancement Grant was awarded in December 2002 in the amount of \$535,223.00; and

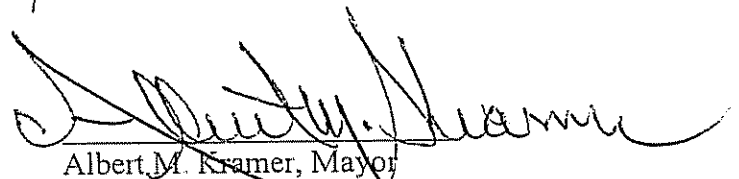
WHEREAS, in June 2003, the City of Nogales requested and was awarded authorization to self-administer the grant; and

WHEREAS, this Intergovernmental Agreement is the next step in the self-administration process of the grant.

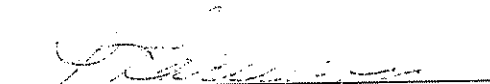
NOW, THEREFORE, BE IT ORDERED by the Mayor and Council of the City of Nogales:

1. That the intergovernmental agreement with the State of Arizona, attached hereto and made a part hereof as Exhibit "A" is hereby ratified and approved.
2. That the City Manager is hereby authorized to execute the agreement on behalf of the City, and City Staff are directed to take all necessary and reasonable actions to implement this agreement.


PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Nogales, Arizona this 6th day of July, 2005.


Albert M. Kramer, Mayor

ATTEST:


Leticia Robinson, City Clerk

APPROVED AS TO FORM:


P. Lawrence Klose, City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0305TRN (**JPA 05-015**), an Agreement between public agencies, i.e., *The State of Arizona* and *City of Nogales*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: July 25, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis". The signature is written in black ink and is positioned above the printed name and title.

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
915744